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THUNDER PROPERTIES, INC, a Nevada corporation,

Plaintiff,
vs.

KATHLEEN J. TREADWAY, an individual;
WELLS FARGO BANK, N.A., a national
banking association; FEDERAL
NATIONAL MORTGAGE ASSOCIATION,
a Delaware corporation; DOE individuals I
through XX; and ROE CORPORATIONS I
through XX,

Case No.: 3:15-cv-00141-MMD-VPC

**JOINT MOTION TO STAY
DISCOVERY PENDING OUTCOME OF
DEFENDANTS' MOTION TO DISMISS**

21 Plaintiff Thunder Properties, Inc. (“Plaintiff”), by and through their undersigned counsel
22 of record, Roger P. Croteau & Associates, Ltd., Defendants Wells Fargo Bank, N.A. and Federal
23 National Mortgage Association (collectively “Defendants”), by and through their undersigned
24 counsel of record, the law firm of Snell & Wilmer L.L.P., and intervenor Federal Housing
25 Financing Agency, by and through their undersigned counsel of record, the law firms of
26 Fennemore Craig, P.C. and Arnold & Porter, LLP (collectively the “Parties”), for good cause
27 shown, hereby move this Court for an order to stay discovery. This motion is based upon the
28 following Memorandum of Points and Authorities, all papers filed with the Court, any documents

1 incorporated by reference or subject to judicial notice, and any oral argument this Court may
2 entertain.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 Defendants have filed a Motion to Dismiss Plaintiff's Complaint ("Motion") under
5 Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 12(b)(6). [Doc. No. 10.] Now, the Parties
6 respectfully request that this Court not allow the parties to proceed with discovery while these
7 challenges to the basis of Plaintiff's entire action are pending. This is the first request for a stay
8 of discovery in this matter.

9 While the standard to justify a stay is demanding, this case satisfies it. "The court will
10 employ a two part test in determining whether to stay the discovery: (1) the pending motion must
11 be potentially dispositive of the entire case or at least dispositive of the issue on which discovery
12 is sought, and (2) the court must determine whether the pending potentially dispositive motion
13 can be decided without additional discovery." *Ministerio Roca Solida v. U.S. Dep't of Fish &*
14 *Wildlife*, 288 F.R.D. 500, 506 (D. Nev. 2013.) The Parties agree that Defendants' Motion
15 warrants a stay under each consideration. Defendants' Motion contends that Nevada Revised
16 Statutes 116.3116 *et seq.* (the "Statute") is unconstitutional on its face and also violates the
17 Takings Clause of the United States and Nevada Constitutions. [Doc. No. 10.] If this Court
18 agrees, this case must be dismissed in Defendants' favor. As Defendants' Motion is based solely
19 on the language of the Statute and recorded documents which this Court may judicially notice, the
20 Motion may also be decided without discovery. A discovery stay in this case is therefore
21 justified.

22 Finally, while Defendants' Motion is pending, Plaintiff's ability to conduct discovery is
23 prejudiced because it cannot customize discovery to Defendants' answer. It is therefore possible
24 discovery would need to be extended, or discovery already conducted would need to be repeated
25 after Defendants file an answer. The Parties agree that if this Court requires them to proceed with
26 discovery under the circumstances of this case, it will be difficult to accomplish a "just, speedy
27 and inexpensive determination" of the matter under Federal Rule of Civil Procedure 1. Discovery
28

1 for all Parties will be more expensive, discovery will be less efficient, and proceeding with
2 discovery at this time may cause an unjust impact on the Parties discovery strategies.

3 **CONCLUSION**

4 If discovery is not stayed pending resolution of the Motion, the Parties will potentially be
5 forced to incur further costs in the production of documents, generation of responses to written
6 discovery, and participation in depositions. All with the possibility of, shortly thereafter, having
7 Defendants' Motion granted. Such a result would be costly, inefficient, and unjust. For this
8 reason, the Parties request that this Court stay discovery until Defendants' Motion is decided.

9 Dated: May 21, 2015

10 Dated: May 21, 2015

11 By: */s/ Timothy Rhoda*
12 Roger P. Croteau, Esq.
13 Timothy Rhoda, Esq.
14 Roger P. Croteau & Associates, Ltd.
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18 By: */s/ Holly E. Cheong*
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27 *Bank, N.A. and Federal National*
28 *Mortgage Association*

18 SIGNATURES CONTINUE TO NEXT PAGE

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1 Dated: May 21, 2015

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3 By: /s/ Asim Varma
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15 *Attorneys for Intervenor Federal Housing Financing*
16 *Agency*

17 **ORDER**

18 IT IS SO ORDERED.

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20 Dated this 27th day of May, 2015.

21
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29 United States Magistrate Judge

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LLP
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CERTIFICATE OF SERVICE

2 I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen
3 (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be
4 served a true and correct copy of the foregoing **JOINT MOTION TO STAY DISCOVERY**
5 **PENDING OUTCOME OF DEFENDANTS' MOTION TO DISMISS** by method indicated
6 below:

7 _____ U.S. Mail, postage prepaid
8 _____ U.S. Certified Mail
9 _____ Facsimile Transmission
10 _____ Overnight Mail
11 _____ Federal Express
12 X _____ Electronic service through the court's e-service program, CM/ECF.

13 and addressed to the following:

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DATED this 21st day of May, 2015.

/s/ Maricris Williams
An employee of Snell & Wilmer L.L.P.